

Introduced by

**NORTH DAKOTA CENTURY CODE CHAPTER 15.1-16 -
TEACHER EMPLOYMENT CONTRACTS**

Chapter 15.1-16 of the North Dakota Century Code is created and enacted as follows:

15.1-16-01. Definitions. As used in this chapter:

1. "Administrator" means an individual who holds an administrator's credential and who is employed by the board of a public school district for the primary purpose of providing administrative services to the schools of the district. The term includes school district superintendents, assistant or associate school district superintendents, school principals, assistant or associate school principals, the director of a multidistrict special education unit, the director of a vocational technology center, and athletic or activity directors.
2. "Negotiating unit" means a group of administrators or a group of teachers who, because of common interests, common problems, a common employer, or a history of common representation, choose to be represented by a single organization in negotiations with a school board.
3. "Representative organization" means an organization authorized by a negotiating unit to represent the members of the unit in negotiations with a school board.
4. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
5. "Teacher" means an individual who is licensed or approved to teach by the education standards and practices board and is under contract with the board of a public school district to provide classroom instruction or individualized instruction. The term includes social workers, school psychologists, and other professionally licensed individuals who meet the criteria of this section. The term does not include administrators, substitutes, or paraprofessionals.

NOTE: Present Section 15-38.1-02. Present Section 15-38.1-02 provides the following definitions:

1. "Administrators" means and includes all public school employees employed primarily for administration of the school or schools of a school district and devoting at least fifty percent of their time in any one year to the duties of administration of the school or schools of a school district.
2. "Appropriate negotiating unit" means a group of administrators having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
3. "Appropriate negotiating unit" means a group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.
4. "Representative organization" means any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board.
5. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
6. "Teachers" means and includes all public school employees licensed under chapter 15-36 and employed primarily as classroom teachers.

The rewrite attempts to more clearly define who falls under the definition of an administrator and who falls under the definition of a teacher. The rewrite attempts to reconcile the definition of an administrator used in present Section 15-38.1-02 with the definition of an administrator used in proposed Chapter 15.1-13 (Education Standards and Practices Board).

The rewrite also attempts to eliminate the present dual definitions of "negotiating units."

15.1-16-02. Education factfinding commission - Appointment - Terms - Quorum.

1. The education factfinding commission consists of three members experienced in educational activities. One member is appointed by the governor, one member is appointed by the superintendent of public instruction, and one member is appointed by the attorney general. The member appointed by the superintendent of public instruction shall serve as the chairman of the commission.
2. The term of each commission member is three years staggered.
3. If a vacancy occurs, the individual who appointed the member to be succeeded shall appoint a new member to serve only the unexpired term of the member to be succeeded.
4. Two members of the commission constitute a quorum.

NOTE: Present Section 15-38.1-03.

1 **15.1-16-03. Education factfinding commission - Compensation.** Each member of
2 the commission is entitled to receive compensation at the rate of sixty-two dollars and fifty cents
3 per day and reimbursement for expenses, as provided by law for state officers, for attending
4 commission meetings or performing duties directed by the commission.

NOTE: Present Section 15-38.1-03.

5 **15.1-16-04. Education factfinders - Compensation.** Each factfinder appointed by the
6 education factfinding commission, including each commission member who serves as a
7 factfinder, is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per
8 day and reimbursement for expenses, as provided by law for state officers, for attending
9 commission meetings or performing duties directed by the commission.

NOTE: Present Section 15-38.1-04.

10 **15.1-16-05. Education factfinding commission - Rules - Powers.** The education
11 factfinding commission may adopt rules. The commission and any factfinder appointed by the
12 commission have, in the performance of their duties, the powers provided in sections 28-32-09,
13 28-32-11, and 28-32-12.

NOTE: Present Section 15-38.1-05.

Section 28-32-09 addresses adjudicative proceedings, subpoenas, discovery, and protective orders. Section 28-32-11 addresses the administration of oaths, and Section 28-32-12 requires that a record be made of all testimony, written statements, documents, exhibits, and other evidence offered at a hearing.

The rules referenced in present Section 15-38.1-05 are not rules adopted under Chapter 28-32. The North Dakota Administrative Code provides that the "education factfinding commission is not an administrative agency as defined by North Dakota Century Code section 28-32-01. Therefore, the commission is not subject to the Administrative Agencies Practices Act (North Dakota Century Code chapter 28-32) and any rules the commission may have adopted are not published in the North Dakota Administrative Code."

14 **15.1-16-06. Factfinding - Sharing of cost.** If an impasse is deemed to exist under
15 section 15.1-16-14, the contending parties shall share the cost of factfinding equally.

NOTE: Present Section 15-38.1-06.

16 **15.1-16-07. Representative organizations - Participation.**

- 17 1. An individual employed as a teacher may form, join, and participate in the activities
18 of a representative organization or refuse to join or participate in the activities of a
19 representative organization.

2. An individual employed as an administrator may form, join, and participate in the activities of a representative organization or refuse to join or participate in the activities of a representative organization.

NOTE: Present Section 15-38.1-07.

15.1-16-08. Representation of views. A representative organization has the exclusive right to represent a negotiating unit in matters of employee relations with a school board. An individual employed as a teacher or as an administrator may independently present the individual's views to a school board, but may not enter into independent negotiations with the board.

NOTE: Present Section 15-38.1-08. Personnel from the North Dakota Education Association suggested that this section needs to clearly state that the ability to provide one's views to a board is not akin to independent negotiations for the individual's particular position.

15.1-16-09. Scope of representation. A representative organization's scope of representation may include matters relating to the terms and conditions of employment and employer-employee relations, including salary and working hours.

NOTE: Present Section 15-38.1-09.

15.1-16-10. Negotiating unit - Formation. A group of individuals employed by the public school district as teachers or a group of individuals employed by the board of a public school district as administrators may form a negotiating unit by filing with the board a description of the job groupings or positions that constitute the negotiating unit. Upon receipt of the description, the board shall accept or reject the proposed negotiating unit. If the board accepts the negotiating unit, the group that filed the description may designate or select a representative organization as provided for in section 15.1-16-11.

NOTE: Present Section 15-38.1-10.

15.1-16-11. Representative organization - Selection.

1. a. An organization interested in representing a group of individuals employed by the board of a public school district as teachers or as administrators may file with the school board a petition asserting that the organization represents a majority of the teachers or administrators included within a negotiating unit. The petition must be accompanied by evidence substantiating the allegation contained in it.

- 1 b. Within ten days after receiving the petition, the board shall post notice of its
2 intent to consider the petition in each school wherein the members of the
3 negotiating unit are employed.
- 4 c. No sooner than ten nor later than twenty days after posting the notice of intent
5 to consider the petition, the board shall investigate the petition, determine the
6 question of representation, and post notice of its determination in each school
7 wherein members of the negotiating unit are employed.
- 8 d. If the petition is not contested, the board shall recognize the petitioner as the
9 representative organization of the negotiating unit, unless it finds in good faith
10 that there is a reasonable doubt regarding the validity of the petitioner's
11 status.
- 12 2. If one organization interested in representing a group of individuals employed as
13 teachers or as administrators wishes to contest the claim of representation made in
14 the petition filed by another organization under subsection 1, the contesting
15 organization shall file a petition with the board. The petition must contain a
16 statement of contest together with evidence substantiating the allegation. The
17 contesting organization shall file its petition within ten days from the date on which
18 the board posted its notice of intent to consider the original petition.
- 19 3. If the board fails to make and post notice of its determination or if the board's
20 determination has been contested, the board shall call an election to determine the
21 question of representation. The election must take place no sooner than twenty
22 nor later than thirty days after the board posts its notice of intent to consider the
23 original petition.
- 24 4. If the board receives a petition that is signed by at least twenty-five percent of the
25 members of the negotiating unit and which calls for an election to determine the
26 question of representation, the board shall call an election. The election must take
27 place no sooner than ten nor later than thirty days after the board receives the
28 petition.
- 29 5. The election must be conducted in the manner agreed to by the interested parties.
30 If the parties cannot reach agreement, the election must be conducted in the
31 manner determined by the education factfinding commission.

NOTE: Present Section 15-38.1-11. Present Section 15-38.1-11(5) provides that "the election must be conducted in the manner determined by the commission under its rules and regulations." The Education Factfinding Commission is not an administrative agency under North Dakota Century Code Section 28-32-01. Therefore, the commission is not subject to the Administrative Agencies Practices Act and any rules of the commission are not published in the North Dakota Administrative Code. To eliminate any potential confusion, the rewrite eliminates reference to any rules and merely provides that the election must be conducted in the manner determined by the Education Factfinding Commission.

Present Section 15-38.1-11(6) provides that once "a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of selection." Because the matter is addressed in proposed Section 15.1-16-18, it is eliminated from this section.

1 **15.1-16-12. Representative organization - Dues - Payroll deduction.** If an individual
2 employed as a teacher requests in writing that the dues for a representative organization to
3 which the individual belongs be deducted from the individual's pay and submitted to the
4 representative organization, the school district in which the individual is employed shall make
5 the deduction and submit the dues as presented.

NOTE: Present Section 15-38.1-11.1.

6 **15.1-16-13. Good-faith negotiations.**

- 7 1. The board of a school district or its representatives and the representative
8 organization or its representatives shall, if requested by either entity, meet at
9 reasonable times and negotiate in good faith regarding:
- 10 a. The terms and conditions of employment.
11 b. Employer-employee relations.
12 c. The formulation of an agreement, which may contain a provision for binding
13 arbitration.
14 d. The interpretation of an existent agreement.
- 15 2. The board of a school district and the representative organization, at the request of
16 either party, shall execute a written contract incorporating any agreement reached.
- 17 3. Either the board of a school district or the representative organization may modify
18 or terminate a contract negotiated under this section by notifying the other party of
19 its intent to modify or terminate the contract at least sixty days before the
20 anniversary date. A modification or termination made under this subsection is
21 effective on the annual anniversary date of the contract.

- 1 4. Nothing in this section compels either the board of a school district or a
2 representative organization to agree to a proposal or to make a concession.

NOTE: Present Section 15-38.1-12.

3 **15.1-16-14. Impasse - Existence.**

- 4 1. An impasse exists if:
5 a. After a reasonable period of negotiation, an agreement has not been
6 formulated and a dispute exists.
7 b. The board of a school district and the representative organization both agree
8 that an impasse exists.
9 2. An impasse may exist if:
10 a. A written contract entered into between the board of a school district and the
11 representative organization under section 15.1-16-13 does not contain a
12 procedure for resolving a dispute.
13 b. A written agreement entered into between the board of a school district and
14 the representative organization under section 15.1-16-13 contains an
15 inadequate procedure for resolving a dispute.

NOTE: Present Section 15-38.1-13.

16 **15.1-16-15. Impasse - Resolution.**

- 17 1. If an impasse exists, the board of a school district and the representative
18 organization may agree to seek mediation. The board and the representative
19 organization shall jointly select a mediator and agree to a distribution of the
20 mediation cost. If mediation fails or if mediation is not attempted, the board or
21 representative organization may request that the education factfinding commission
22 provide assistance.
23 2. If the education factfinding commission is asked to provide assistance under
24 subsection 1 or if the commission determines that an impasse exists, the
25 commission shall act as a factfinding commission or appoint a factfinder from a list
26 of qualified individuals maintained by the commission. A factfinder appointed
27 under this section has the powers designated by the commission. Upon
28 completion of all duties, the factfinder shall make a recommendation to the
29 commission.

- 1 3. The education factfinding commission shall:
- 2 a. Consider the facts, make its findings, and issue a recommendation; or
- 3 b. Consider the factfinder's report and recommendation, engage in any further
- 4 investigation it deems necessary, and thereafter make its findings and issue a
- 5 recommendation.
- 6 4. Within forty days from the date the commission determines that an impasse exists,
- 7 the commission shall deliver its findings and recommendations to the board of the
- 8 school district and to the representative organization. Between ten and twenty
- 9 days after its findings and recommendations are delivered to the board and the
- 10 representative organization, the commission shall, if the impasse is not resolved,
- 11 make its findings and recommendation public.
- 12 5. If facts are established or a recommendation made in accordance with factfinding
- 13 procedures agreed to by the board of the school district and the representative
- 14 organization and the impasse continues, the education factfinding commission may
- 15 consider the findings and recommendations without instituting its own factfinding
- 16 procedure and the commission may issue its own findings and recommendations
- 17 based on the information available. No sooner than ten nor later than twenty days
- 18 after these findings and recommendations are delivered to the board and the
- 19 representative organization, the commission shall, if the impasse is not resolved,
- 20 make its findings and recommendations public.

NOTE: Present Section 15-38.1-13.

21 **15.1-16-16. Participation in a strike - Prohibition.** No teacher, administrator, or

22 representative organization may participate in a strike. Any teacher or administrator engaging

23 in a strike may be denied the full amount of wages during the period of such violation.

NOTE: Present Section 15-38.1-14(1) and (5). Present law provides that no teacher, administrator, or representative organization may participate in a strike. However, wages may be denied only for a participating teacher. Subject to approval by the committee, the rewrite adds that wages may also be denied for a participating administrator.

24 **15.1-16-17. Discrimination - Prohibition.** Neither the board of a school district nor

25 any administrator employed by the district may discriminate against any individual employed as

26 a teacher or administrator because the individual exercises rights available under this chapter.

NOTE: Present Section 15-38.1-14(3). Present Section 15-38.1-14(3) provides that "school boards or administrative officers thereof may not discriminate against teachers because of their exercise of rights under this chapter." The rewrite replaces the phrase "administrative officers" with "administrator" and, subject to committee approval, extends the prohibition against discrimination to administrators as well as teachers.

15.1-16-18. Representative organization - Recognition - Withdrawal of recognition. A contract between the board of a school district and a representative organization bars another representative group from petitioning for recognition and bars the withdrawal of recognition from the representative organization for the duration of the contract or three years, whichever is less.

NOTE: Present Section 15-38.1-14(4).

15.1-16-19. Sick leave - Accumulation. The board of a school district shall allow a teacher to:

1. Use at least ten days of sick leave each school year without a loss of compensation; and
2. Accumulate sick leave and carry over from year to year at least thirty days of accumulated unused sick leave.

NOTE: Present Section 15-47-35.

15.1-16-20. School for the blind - School for the deaf - Youth correctional center - Contracts of employment for teachers - Personnel policies.

1. The superintendent of public instruction shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at the school for the blind and the school for the deaf. The director of the division of juvenile services, with the approval of the director of the department of corrections and rehabilitation, shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at the North Dakota youth correctional center.
2. The contracts required by this section may include the assignment of duties, salaries, work hours, job titles, and a school calendar.
3. The personnel policies required by this section must include job descriptions and nonrenewal, discipline, and dismissal procedures. The policies must seek to harmonize the rights of teachers with laws applicable to other state employees. The superintendent of public instruction and the director of the division of juvenile

- 1 services, with the approval of the director of the department of corrections and
2 rehabilitation, shall work together in the development of the personnel policies.
- 3 4. Each individual employed as a teacher at the school for the blind, the school for the
4 deaf, or the youth correctional center is entitled to receive a copy of a master
5 agreement consisting of a policy manual and an individualized contract specifying
6 the individual's job title, contracted hours, salary schedule, benefits, and other
7 details applicable to the individual's employment.
- 8 5. For purposes of this section, "teacher" means a contracted state employee who:
- 9 a. Holds a teaching license or is approved to teach by the education standards
10 and practices board;
- 11 b. Is employed primarily to provide classroom instruction or individualized
12 instruction;
- 13 c. Has a work schedule set in accordance with the school calendar;
- 14 d. Is a guidance counselor, school librarian, itinerant outreach teacher, or a
15 vocational and technological resource person required to meet teaching and
16 licensure requirements; and
- 17 e. Is not a superintendent, assistant superintendent, principal, supervisor,
18 substitute, or paraprofessional.

NOTE: Present Section 15-47-27.2.

DRAFTER'S NOTE

Present Section 15-38.1-01 contains the following legislative intent language:

15-38.1-01. Purpose. In order to promote the growth and development of education in North Dakota which is essential to the welfare of its people, it is hereby declared to be the policy of this state to promote the improvement of personnel management and relations between school boards of public school districts and their certificated employees by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice and be represented by such organization in their professional and employment relationships with the public school districts.

Because the purpose of a properly drafted bill should be self-evident, the Legislative Council's drafting manual states that a statement of legislative policy, purpose, or intent should not be used. Therefore, the statement of legislative intent has been omitted from the rewrite.

Present Section 15-47-28 provides that "[i]n the event of breach of contract on the part of a teacher or administrator, the education standards and practices board or the administrator's professional practices board shall suspend the individual's professional

teaching license for a period not to exceed one year, during which time it is unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota."

The section is omitted from the rewrite of this chapter because the issue of suspension is addressed in present Section 15-36-15 and proposed Section 15.1-13-24. Chapter 15.1-13 pertains to the Education Standards and Practices Board.